

EXHIBIT 8 – FEDERAL STANDARD REQUIREMENTS

SPECIAL PROVISIONS

**TO THE AGREEMENT BETWEEN
THE CITY AND COUNTY OF HONOLULU
AND PB AMERICAS, INC.**

GENERAL ENGINEERING CONSULTANT CONTRACT II

HONOLULU HIGH-CAPACITY TRANSIT CORRIDOR PROJECT

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FEDERAL STANDARD REQUIREMENTS

1.0 GENERAL

The CONSULTANT understands that Federal laws, regulations, policies, and related administrative practices applicable to this Agreement on the date signed may be modified from time to time. The CONSULTANT agrees that the most recent of such Federal requirements will govern the administration of the Agreement at any particular point in time, except if the CITY issues a written determination otherwise. To achieve compliance with changing Federal requirements, the CONSULTANT agrees to include notice in each subcontract that Federal requirements may change and that the changed requirements will apply to the subcontract as required.

1.1 No Government Obligation to Third Parties

(a) The CITY and the CONSULTANT acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Agreement, absent the express written consent by the Federal Government, the Federal Government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the CITY, the CONSULTANT, or any other party (whether or not a party to that Agreement) pertaining to any matter resulting from the underlying Agreement.

(b) The CONSULTANT agrees to include the above clause in each subcontract. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

1.2 Program Fraud and False or Fraudulent Statements and Related Acts

(a) The CONSULTANT acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Upon execution of the underlying Agreement, the CONSULTANT certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying Agreement or the Federal Transit Administration (FTA) assisted project for which this Agreement work is being performed. In addition to other penalties that may be applicable, the CONSULTANT further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the CONSULTANT to the extent the Federal Government deems appropriate.

(b) The CONSULTANT also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under an Agreement connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. Chapter 53, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5323(l) on the CONSULTANT, to the extent the Federal Government deems appropriate.

(c) The CONSULTANT shall include the above two clauses in each subcontract. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

1.3 Access to Records and Reports

(a) The CONSULTANT shall provide the CITY, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the CONSULTANT which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. The CONSULTANT shall, pursuant to 49 C.F.R. § 633.17, provide the FTA Administrator or his authorized representatives, including any Project Management Oversight Contractor, access to the CONSULTANT's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. §§ 5307, 5309 or 5311.

(b) The CONSULTANT shall permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(c) The CONSULTANT shall maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the date of termination or expiration of this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case the CONSULTANT shall maintain the same until the CITY, the FTA Administrator, the Comptroller General of the United States, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

1.4 Federal Changes

The CONSULTANT shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between the CITY and the FTA, as they may be amended or promulgated from time to time during the term of this Agreement. The CONSULTANT's failure to so comply shall constitute a material breach of this Agreement.

1.5 Civil Rights Requirements

The CONSULTANT shall comply with the following requirements and include the following requirements in each subcontract, modified only if necessary to identify the affected parties:

(a) Nondiscrimination. In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the CONSULTANT shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the CONSULTANT shall comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(b) Equal Employment Opportunity. The following equal employment opportunity requirements apply to the underlying Agreement:

(1) Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the CONSULTANT shall comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The CONSULTANT shall take affirmative action to ensure that applicants are employed, and that

employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the CONSULTANT shall comply with any implementing requirements FTA may issue.

(2) Age. In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the CONSULTANT shall refrain from discrimination against present and prospective employees for reason of age. In addition, the CONSULTANT shall comply with any implementing requirements FTA may issue.

(3) Disabilities. In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the CONSULTANT shall comply with the requirements of the U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the CONSULTANT shall comply with any implementing requirements FTA may issue.

(4) Access for Individuals with Disabilities. The CONSULTANT shall comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities.

1.6 Disadvantaged Business Enterprises (DBE)

(a) DBE Assurances. The CONSULTANT and its subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. The CONSULTANT shall carry out applicable requirements of 49 C.F.R. Part 26 in the award and administration of U.S. DOT-assisted Agreements. Failure by the CONSULTANT to carry out these requirements is a material breach of this Agreement, which may result in termination of this Agreement or such other remedy, as the CITY deems appropriate.

The above paragraph shall be included in each subcontract the CONSULTANT signs with a subcontractor.

(b) Prompt Payment. The CONSULTANT shall pay all subcontractors (DBEs and non-DBEs) for satisfactory performance of their subcontracts no later than ten (10) days from receipt of payment by the CITY. Full and prompt payment by the CONSULTANT to all subcontractors shall include retainage, if applicable.

(c) DBE Goal. The CITY has established a race neutral overall DBE goal of 3.83% for fiscal year 2010. Although the CITY has not established a DBE Agreement goal for this Project, DBE firms and small businesses shall have an equal opportunity to participate in the Agreement. The CONSULTANT shall adhere to the following requirements:

(1) Take affirmative steps to use as many of the race-neutral means of achieving DBE participation identified at 49 C.F.R. § 26.51(b) as practicable to afford opportunities to DBEs to participate in the Agreement. A race-neutral measure is one that is, or can be, used to assist all small businesses.

(2) A DBE firm must perform a commercially useful function, i.e., must be responsible for the execution of a distinct element of the work and must carry out its responsibility by actually performing, managing and supervising the work; and

(3) A DBE firm must be certified by the Hawai'i State Department of Transportation before its participation is reportable under paragraph (d) below;

(d) Reports to the CITY. The CONSULTANT shall report its DBE participation obtained through race-neutral means throughout the period of performance. The CONSULTANT shall submit the "DBE PARTICIPATION REPORT" reflecting payments made by the CONSULTANT to DBE subcontractors. Payments to the CONSULTANT will not be processed if the DBE PARTICIPATION REPORT is not properly completed and attached. The DBE PARTICIPATION REPORT shall be prepared in the format set forth in ATTACHMENT 1.6 a) to this Exhibit 8.

(e) Records. On request, the CONSULTANT shall make available for inspection, and assure that its subcontractors make available for inspection:

(1) Records of prompt payments made in accordance with Section 1.6(b), above;

(2) The names and addresses of DBE subcontractors, vendors, and suppliers under this Agreement;

(3) The dollar amount and nature of work of each DBE subcontractor;

(4) The social/economic disadvantaged category of the DBE firms, i.e. Black American, Hispanic American, Native American, Subcontinent Asian American, Asian Pacific American, Non-Minority Women, or Other; and

(5) Other related materials and information.

(f) The CONSULTANT shall promptly notify the CITY, whenever a DBE subcontractor performing work related to this Agreement is terminated or fails to complete its work. The CONSULTANT shall also promptly notify the CITY of a DBE subcontractor's inability or unwillingness to perform and provide reasonable documentation.

1.7 Government-Wide Debarment and Suspension (Non-procurement)

(a) This Agreement is a covered transaction for purposes of 2 C.F.R. § 180.220(b) and 2 C.F.R. § 1200.220. As such, the CONSULTANT is required to verify that none of the CONSULTANT, its principals, as defined at 2 C.F.R. § 180.995, or affiliates, as defined at 2 C.F.R. § 180.905, are excluded or disqualified as defined at 2 C.F.R. § 180.940 and 2 C.F.R. § 180.935.

(b) The CONSULTANT is required to comply with 2 C.F.R. § 180 Subpart C, as supplemented by 2 C.F.R. § 1200 Subpart C, and must include the requirement to comply with 2 C.F.R. § 180, Subpart C, as supplemented by 2 C.F.R. § 1200 Subpart C, in any lower tier covered transaction equal to or exceeding \$25,000 it enters into. By signing the Agreement, the CONSULTANT certifies as follows:

The certification in this clause is a material representation of fact relied upon by the CITY and County of Honolulu (the CITY). If it is later determined that the CONSULTANT knowingly rendered an erroneous certification, in addition to remedies available to the CITY, the Federal Government may pursue available remedies, including but not limited to suspension and/or

debarment. The CONSULTANT agrees to comply with the requirements of 2 C.F.R. § 180, Subpart C, as supplemented by 2 C.F.R. § 1200 Subpart C, throughout the Agreement period. The CONSULTANT further agrees to include a provision requiring such compliance in its lower tier covered transactions equal to or exceeding \$25,000.

1.8 Lobbying

The "CERTIFICATION REGARDING LOBBYING," as executed by the CONSULTANT in Exhibit 7 of the Special Provisions is incorporated herein by reference. The CONSULTANT and its subcontractors at every tier shall comply with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352, which requires that no Federal appropriated funds shall be used to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Agreement, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal Agreement, grant, or award covered by 31 U.S.C. § 1352. Such disclosures are forwarded from tier to tier up to the CITY.

1.9 Clean Air Requirements

(a) The CONSULTANT shall comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The CONSULTANT shall report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

(b) The CONSULTANT shall include the above clause in each subcontract exceeding \$100,000.

1.10 Clean Water Requirements

(a) The CONSULTANT shall comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. The CONSULTANT shall report each violation to the CITY and understands and agrees that the CITY will, in turn, report each violation as required to FTA and the appropriate EPA Regional Office.

(b) The CONSULTANT shall include the above clause in each subcontract exceeding \$100,000.

1.11 Fly America Requirements

(a) The CONSULTANT shall comply with 49 U.S.C. § 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 C.F.R. Parts 301-10, which provide that the CITY and sub-recipients of Federal funds and their consultants are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The CONSULTANT shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements.

(b) The CONSULTANT shall include the requirements of this section in all subcontracts that may involve international air transportation.

1.12 Energy Conservation Requirements

(a) The CONSULTANT shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

(b) The CONSULTANT shall include the above clause in each subcontract at every tier. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to the provisions.

1.13 Recycled Products

The CONSULTANT agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act as amended (42 U.S.C. § 6962), including, but not limited to, the regulatory provisions of 40 C.F.R. Part 247, and Executive Order No. 12873, as they apply to the procurement of the items designated in Subpart B of 40 C.F.R. Part 247.

1.14 ADA Access

The CONSULTANT shall comply with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, and any subsequent amendments to these laws. In addition, the CONSULTANT agrees to comply with all applicable implementing Federal regulations and directives and any subsequent amendments thereto.

1.15 Seismic Safety

The CONSULTANT shall ensure that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in the U.S. Department of Transportation's Seismic Safety Regulations (49 C.F.R. Part 41) and shall certify to compliance to the extent required by the regulation. The CONSULTANT also agrees to ensure that all work performed under this Agreement including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the Project.

1.16 Text Messaging While Driving

In accordance with Executive Order No. 13513, Federal Leadership on Reducing Text Messaging While Driving, October 1, 2009, 23 U.S.C.A. § 402 note, and U.S. DOT Order 3902.10, Text Messaging While December 30, 2009, the CONSULTANT is encouraged to comply with the terms of the following:

(a) Definitions.

(1) "Driving" means operating a motor vehicle on a roadway, including while temporarily stationary because of traffic, a traffic light, stop sign, or otherwise. "Driving" does not include being in your vehicle (with or without the motor running) in a location off the roadway where it is safe and legal to remain stationary.

(2) "Text Messaging" means reading from or entering data into any handheld or other electronic device, including for the purpose of short message service texting, e-mailing, instant messaging, obtaining navigational information, or engaging in any other form of electronic data retrieval or electronic data communication. The term does not include the use of a cell phone or other electronic device for the limited purpose of entering a telephone number to make an outgoing call or answer an incoming call, unless the practice is prohibited by State or local law.

(b) Safety. The Grantee is encouraged to:

- (1) Adopt and enforce workplace safety policies to decrease crashes caused by distracted drivers including policies to ban text messaging while driving:
 - (A) Grantee-owned or Grantee-rented vehicles or Government-owned, leased or rented vehicles;
 - (B) Privately-owned vehicles when on official Project related business or when performing any work for or on behalf of the Project; or
 - (C) Any vehicle, on or off duty, and using an employer supplied electronic device.
- (2) Conduct workplace safety initiatives in a manner commensurate with the CONSULTANT's size, such as:
 - (A) Establishment of new rules and programs or re-evaluation of existing programs to prohibit text messaging while driving; and
 - (B) Education, awareness, and other outreach to employees about the safety risks associated with text messaging while driving.
- (3) Include this Special Provision in its subagreements with its subrecipients and third party contracts and also encourage its subrecipients, lessees, and third party contractors to comply with the terms of this Special Provision and include this clause in each subagreement, lease, and subcontract at each tier financed with Federal assistance provided by the Federal Government.

1.17 Incorporation of FTA Terms

(a) The Special Provisions include, in part, certain Standard Terms and Conditions required by the U.S. DOT, whether or not expressly set forth in the preceding provisions. All contractual provisions required by the U.S. DOT, as set forth in FTA Circular 4220.1F are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The CONSULTANT shall not perform any act, fail to perform any act, or refuse to comply with any CITY requests which would cause the CITY to be in violation of the FTA terms and conditions.

(b) The CONSULTANT shall include the above clause in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.